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TSPL

SUBJECT: THE EU'S CLIMATE AND ENERGY PACKAGE; LOOKING BACK,
HOW DID IT HAPPEN?

REF: A. BRUSSELS 117

- [1](#)B. BRUSSELS 1171
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[1](#)1. (SBU) Summary: The European Union, led by the French Presidency, completed its Climate and Energy Legislative Package in December 2008. However, what transpired between January 23, 2008, when the European Commission proposed the four pieces of legislation that made up the Climate Package, and December 17, when the European Parliament approved all four pieces, along with two related Directives, is an excellent example of the inner workings of the EU and its legislative process. Given its complex status as an EU "mega-law," this story can provide insight into future legislative processes. EU officials, industry representatives, and NGOs are in general agreement that the finalization of such a complex package would not have been likely had a country other than France, which put the weight of its Presidency behind the Climate Package, held the chair.
End summary.

Climate and Energy Package-Overview

[1](#)2. (U) Four separate pieces of legislation were proposed by the European Commission on January 23, 2008, in what is commonly known as the Climate and Energy Package, designed to help the EU meet its "20-20-20 in 2020" climate and energy goals. The Climate Package comprises 20% emissions reductions from 1990 levels, 20% share of power to come from renewable energy sources, and 20% increase in energy efficiency by 2020. The Climate Package was built on:

(1) a Directive revising the Emissions Trading Scheme (ETS), the EU's cap and trade system which applies primarily to fixed industrial plants. The final agreement provided some free allowances to carbon intensive industries, to be determined over the next year, as well as derogations to the power sector in Member States that generate a high proportion of their power from fossil fuels;

(2) a proposal on Burden Sharing, defining the emissions reduction requirements for each Member State to meet the 20% reduction goal in areas not included in ETS;

(3) a Renewables Directive to define the renewables

targets for each Member State. This directive was best known for its definitions of biofuels sustainability; and

(4) a Carbon Capture and Storage (CCS) Directive that establishes a legal framework promoting the development and use of environmentally safe CCS technology. This Directive called for up to 12 demonstration projects in the EU. At this time only about five or six appear to have a realistic possibility of funding.

¶3. (SBU) Over the course of the year, two separate but related directives, defining CO2 emissions standards from passenger vehicles and specifying fuel quality standards, were added to the Climate and Energy Package (hereafter, "the Climate Package"), given their complementarity to the original four described above. After less than a year of debate, the Climate Package was approved by all 27 Member States on December 12, 2008, and overwhelmingly approved in Parliament on December 17 in a first reading agreement, extremely rare for complex legislation such as this. (Note: See reftels for further detail on the various pieces of legislation and the debate that took place over the year. End note.)

France was the key, but other pieces fell into place as well

¶4. (SBU) That France held the Presidency during the final negotiations is widely accepted as the single reason the Climate Package was able to be completed by December 2008. According to many, only France had the weight to require negotiation sessions to carry on until the early hours of

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morning and to be able to make some of the large concessions necessary to achieve full agreement. Both Commission and Parliament officials have stated that the French Presidency managed the Climate Package brilliantly, staying one step ahead of developments to keep the process moving forward. France declared in July, at the beginning of its Presidency, that passage of the Climate Package by the end of 2008 was essential to the EU's ability to address climate change and to prepare for UN climate negotiations and the UNFCCC Summit in Copenhagen at the end of 2009. In addition, the incoming Czech Republic Presidency gave additional impetus to finish in 2008. The Czechs informed various PermReps that energy security was their priority, and they would focus their Presidency on the 3rd Energy Package. The 3rd Energy Package focuses on Europe's energy security priorities, addressing Europe's internal gas and electricity markets and infrastructure, as opposed to the Climate Package, which targets Europe's goals to address climate change.

¶5. (SBU) Apart from the Council, both the Commission and Parliament were well positioned to complete the Climate Package in an effective manner. The EU Commission's Environment Commissioner Stavros Dimas is one of the strongest driving forces in the EU working on climate change.

In the midst of the financial crisis, Dimas was the first to come out and stress that the Climate Package should not be a casualty of the economic situation. At working levels, the desk officers were well experienced to handle the negotiations. Damien Meadows, the DG Environment expert on ETS, the most difficult legislative piece of the Climate Package, had participated in the co-decision process nine times previously, including on another EU "mega-law," the chemicals regulation REACH. In the Parliament, the selection of Irish MEP Avril Doyle, a member of the EPP-ED (the center-right Christian Democrats), as the ETS Rapporteur, helped shepherd through environmental legislation from within a party often more concerned about protecting industry and the financial sector. Most importantly, however, both the Commission and Parliament were in full agreement with France that the Climate Package had to be completed in 2008, as they believed any delay would risk the integrity of the

legislation and hamper EU efforts domestically and internationally in addressing climate change.

Was the Deck Stacked? Most believe so

¶16. (SBU) Though at least one Commission official called the completion of the Climate Package in December a "miracle," and even the French said they weren't convinced it would work out, in the end, everyone conceded that it was never really that far out of hand. The first signs of discord arose in July when Poland, over 90% dependent on coal for power generation, threatened a veto over concerns that the Climate Package would irreparably damage its economy. Shortly thereafter, it became clear that most of the other seven new central European Member States had similar concerns, and reaching agreement began to be called into question. Ultimately, when France made the political commitment that it would seek full support from all 27 Member States, and not only the qualified majority required for environmental legislation under EU law, the Climate Package became easier to negotiate, as all Member states realized they would be heard. However, as time went on, more Member States voiced discontent, most notably Italy, and in the final weeks, Germany, as both Berlusconi and Merkel made strong statements about the impact of the legislation on their industry and economies. Parliament was equally vocal, particularly when it appeared the concerns of the various Member States would derail the legislation.

¶17. (SBU) French officials, while now admitting they had some trepidation, given all of the competing forces, recognized concerns early on, and France was ultimately prepared to address them. In the final text, just about every Member State received some concession. Germany and Italy protected their industrial sectors through free allowances to carbon-intensive industries; Poland and the Czech Republic received support for their coal-based power sectors; almost all new Member States were given extra allowances for emission reductions since 1990 (though western Europe argued this was a result of post-Soviet deindustrialization and not

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a concerted effort); the UK and the Netherlands, among others, received support for carbon capture and storage development; and even Lithuania received concessions to help deal with the closure of its Ignalina nuclear power plant. According to several EU officials, France was prepared early to undertake these commitments to ensure full support.

Parliament gave in; at least that is how it was made to look

¶18. (SBU) The European Parliament often served as the foil to the Commission and the Council, both of which were increasingly aware of the impact of the legislation on industry. As all but one of the legislative pieces were handled by the Parliament's Environment Committee (the Renewables Directive was managed by the Industry, Research and Energy Committee), many of the proposed Parliamentary amendments substantially altered the legislation in a much more environmental direction. In many cases, these proposals increased the gap between Parliament and Council. In practice, the Environment Committee often proposes, and adopts, amendments out of line with the political current across most of Europe, knowing they won't be accepted in the end, if only to set down markers for debate.

¶19. (SBU) In public, Parliament made statements affirming its power and influence over the proceedings, including threatening to hold an extraordinary Plenary session a week before the Council convened to ensure that the 27 heads of state and government considered Parliament's views. Ultimately, the French Presidency convinced Parliament that

an extraordinary session was unnecessary, and Parliament President Hans-Goert Poettering backed off but only after publicly asserting that Parliament would not vote for anything with which it inherently disagreed, even if all 27 Member States were in consensus. Additionally, though, during the final weeks, large sections of Parliament, including the Greens, Socialists, and Liberals, were in agreement, there appeared to be large schisms within the EPP-ED, the largest group in Parliament, notably among the German MEPs who reflected the growing concern in their industry about the impact of the legislation.

¶10. (SBU) In the end, Parliament only had a few true redlines in the negotiation, and the French Presidency was diligent in keeping Parliament informed at all times, so the potential for surprise was eliminated. Before the final European Council recessed on December 12, Parliament had successfully negotiated its key issues, notably: (1) that indirect land use change be included in biofuels sustainability calculations; (2) that at least 300 million carbon allowances (approximately EUR 7 billion) be allotted to carbon capture and storage demonstration projects; and (3) that a maximum of 50% of greenhouse gas (GHG) emissions be offset via the clean development mechanism (CDM). In the process, Parliamentarians were willing to sign off on many of the other changes in the final Plenary vote, so long as the 20% cap was maintained. Thus, the next day it only took three hours for the French to reach an agreement with key parliamentarians.

Might not be as much of a failure as the press implies

¶11. (SBU) Although the press and NGOs (at least publicly) claimed the Climate Package was effectively gutted; the concessions made by the French may not be as severe as implied. The French Presidency, the Parliament, and the Commission argue that the most critical piece of the Climate Package, the emissions cap of an EU-wide 20% reduction by 2020, remained in place. However, it is important to note that the EU benefits from previous efforts between 1990 and 2005, and the actual target from today's values is closer to a 13% reduction across the EU. Even with free allowances to some companies, based on the benchmarking system to be put in place over the coming year, and some derogation to the power sector, industries still need to reduce their emissions as the cap descends annually. Member States are also required to develop national action plans and to meet the national emissions goals set by the EU for all sectors not included under ETS. Though it still is not clear how much of the 20%

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will actually take place in the EU, as several percent may be accounted for through the use of offsets from projects in developing countries, the final goal in several countries remains ambitious. Under adoption of an international climate agreement in Copenhagen, the EU remains committed to increasing its 20% target to 30%, though again, the final economy-wide effects are still to be determined.

¶12. (SBU) Irish MEP Rapporteur Avril Doyle and representatives from the French delegation in Brussels argued that even if many industries and parts of the power sector do not need to purchase their emissions allowances, all industries remain required to reduce emissions. A DG Environment official added that with the benchmarking system, not all companies within a carbon-intensive industry receive free allowances, a fact often glossed over by the press. The cleanest companies at the time of benchmarking receive the most free allowances, and then the rest have to buy some, or most, of their allowances. (Note: Despite this subtlety, both EU and industry officials opined that full auctioning is a better way of managing a cap and trade system; benchmarking is very complex and cumbersome. USEU will approach this issue in more depth in a separate cable on ETS. End note.)

¶13. (SBU) The process for the rest of the legislation followed suit from the emissions reduction issue. The other two parts of the "20-20-20" goals remained in the legislation, that is, 20% energy share to be derived from renewables and a 20% increase in energy efficiency. Some details were amended, but the main goals, at least according to EU officials, were left in place, allowing the EU to reach several of its targets. Under the Renewables Directive, left largely intact from the original Commission proposal, several Member States have expressed concern that their national targets are very difficult, but only a few have said they don't believe they can do it. Also under the Renewables Directive, there was a large debate over biofuels, and many questioned the 10% target for the use of alternative fuels in transport (the majority of which will come from biofuels). The target for alternative fuels in transport was maintained, however, in return for the promise that indirect land use change will be included in the sustainability calculations. Under the Directive on CO2 emissions for automobiles, the final 95 g CO2/km in 2020 was kept, though industry managed to obtain a longer phase-in time. In the end, it will take several years to understand fully the effects of all of the concessions. It can be expected that the EU will likely meet its goals, at least on paper, but the true emissions reductions within the EU's borders, may fall short of the final targets.

What can we learn?

¶14. (SBU) Although approval of the Climate and Energy Package came under a specific set of circumstances, the insights gained into the EU's legislative process of co-decision can be applied to future efforts. Most clearly, given sufficient political will in Europe, the EU has the ability to complete deals at the eleventh hour, especially when a political goal can be achieved despite substantive concessions that compromise that political goal. From the Council, a clear knowledge of Presidency priorities will help determine where in the legislative calendar an effort will fall. In this case, the French had strong environmental ambitions, which were well known, while the Czechs, who were to take over the EU Presidency after France, were well known skeptics of major environmental reforms. Thus, the timing of particular Presidencies carries in it a special dynamic. The distinct difference between the French and the Czechs probably enhanced the adoption of the Climate Package in a relatively short timeframe. Similar consideration likely can be given to the Swedish Presidency and its strong environmental agenda during the run-up to Copenhagen. Within the Parliament, the choice of rapporteur will also give an indication of where the Parliament is likely to go. Some political groups spend a lot of political capital to gain control of certain legislation, and assignment of the rapporteur can be very telling. Close cooperation with Parliament, as USEU had with the Climate Package, can assist in lobbying and understanding of the situation.

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¶15. (SBU) A greater issue from a U.S. policy perspective is the lack of transparency from the Council that accompanies these efforts. The concern that an international negotiating position may be weakened was sufficient to keep outsiders at bay. This can leave little room for U.S. influence, particularly in the closing stages of the legislative process. The best window for U.S. intervention is early in the process, either before, or as soon after as possible, the release of the initial Commission legislative proposals.

¶16. (SBU) In the meantime, the EU Environment Commissioner, Stavros Dimas, convoked USEU Charge on short notice this past week to express his desire to coordinate closely with the U.S. on climate issues. Dimas himself acknowledged the

difficulties of the EU's ETS and said he or his staff are ready to share the EU's "lessons learned" with U.S. officials.

MURRAY

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